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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,370	07/03/2003	Kenneth Strannemalm	018798-172	3714

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Alexandria, VA 22313-1404

EXAMINER
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GIBSON, KESHIA L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/612,370

Applicant(s)

STRANNEMALM, KENNETH

Examiner

Keshia Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 14-18 is/are rejected.
- 7) ☒ Claim(s) 9-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendments to the specification filed 7/5/05 do not appear to add new matter to the disclosure and are adequate to overcome the Examiner's previous objections to the drawings.
2. Although the Examiner originally considered the abstract of 7/3/03 to be too long, applicant's statement that the abstract was 149 words resulted in a recount. The abstract is indeed 149 and not 153 as originally counted. As such, Examiner's objection to the length of the abstract is withdrawn.

### ***Response to Arguments***

3. Applicant's arguments filed 7/5/05 have been fully considered but they are not persuasive. Applicant has argued:
  - 1) The undergarment of Fisher will not satisfactorily provide a disposable article. However, Fisher is still considered disposable; any garment can be disposed.
  - 2) The undergarment of Fisher is expensive and difficult to produce. However, the cost of producing an article is not relevant to whether the article anticipates the claimed invention.
  - 3) The absorbent element of Fisher is not configured with deformation zones because the deformation zones cited by the Examiner are portions of the brief, not portions of the brief. However, the invention as claimed requires the absorbent to be "configured with one or more deformation zones," not that the zones are portion are

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portions of the absorbent. "Configured" has been defined to mean "to set up for operation especially in a particular way." In this case, the absorbent element is configured with the cited elements so that the front portion of the article may be drawn downward with the absorbent element intact.

4. Thus, despite applicant's arguments, Fisher, Fisher in view of Cottenden, Buell, and Widlund et al. are still considered to anticipate and/or render obvious the structural limitations set forth in Claims 1-8 and 14-18 of the claimed invention, as presented in the previous Office Action (which has been presented again below).

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claim 1-6, 14 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Fisher (US 5,290,270).

In regard to Claim 1, Fisher discloses a pants-shaped absorbent product 10 for males, comprising a front section 14, a rear section 16, a crotch section 18, side sections S to connect the front section 14 and the rear section 16 in the lateral direction, wherein the side sections S comprise hip sections H, an elastic waist region 12, 22, and an absorbent element 34, which covers the penis of the user (column 2, lines 58-column 3, line 10; Figs 1-2, Fig. A below).

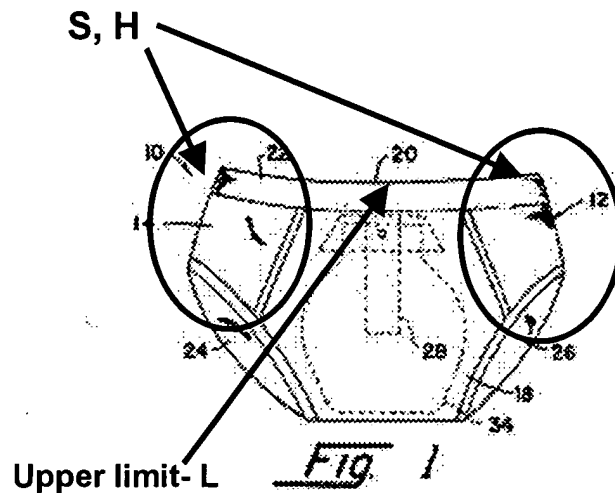


Fig. A: Examiner's markup of Fisher's Fig. 1 to show hip and side sections.

(The front, rear, and crotch sections 14, 16, 18, are disclosed as being elastic (column 2, line 67- column 3, line 1); thus, the examiner considers the brief 12 (and more specifically, its upper half), which comprise each of these regions—along with waistband 22—to be the elastic waist region.) The product further comprises a liquid-tight outer layer 56 to cover the absorbent element 34 (54) at least on the side thereof facing away from the user when the product is worn; wherein the front section 14 has at least one elastic member 22. The elastic member 22 enables the front section 14 of the product to be pulled down during use, counter to the action of the elastic member, to a position in which the upper limit edge L of the front section 14 in the middle region of the front section 14 is situated below the penis of the user, at the same time as at least the hip sections H of the product are arranged to be held in place around the waist of the user (column 4, lines 20-54).

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Reading the recitation, "wherein the absorbent element is configured with one or more deformation zones," broadly, the absorbent element 34 is configured with one or more deformation zones 36/38/28, which enable parts 48 of the absorbent element 34 that are situated above and over the penis of the user during product usage to be drawn down together with the rest of the front section 14 when the front section 14 of the product 10 is pulled down, and wherein the front section 14 and the absorbent element 34 are arranged to be returned by the elastic member 22 to an original usage position (column 4, lines 20-54; Figs. 1-3 and 6). The examiner has defined deformation as the alteration in the shape or form of an object. In this case, the addition of a pocket 36 to the front section 14 of product 10 results in an alteration of the shape of the brief 12, especially since it is disclosed that the pocket 36 is typically thicker than the brief 12, which would result in a change in the thickness of the front section 14 and in the overall shape of the brief 12.

In regard to Claim 2, Fisher does not disclose any information concerning the tensile stress of the elastic member 22 or the elastic waist region 12, 22. However, the elastic member 22 is shown as being made from a single strip of material (Figs. 1-2 and 6), which would result in the material having the same properties throughout. Thus, the elastic member 22 would have a constant tensile stress when stretched. Also, the examiner has taken the phrase "the same order of magnitude as the tensile stress in the elastic waist region" to mean that the elastic member and the elastic waist region are about to be stretched about the same distance. Based on Fig. 6, the elastic member 22 and the elastic waist region 12, 22 have about the same degree of stretchability.

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In regard to Claim 3, as discussed for Claim 1, the elastic member 22 is considered part of the elastic waist region 12, 22 and therefore comprises a section of the elastic waist region 22.

In regard to Claim 4, the elastic waist region 12, 22 completely surrounds the waist; therefore a section of it extends over the front section 14 between the hip sections H (Figs. 1-3 and Fig. A above).

In regard to Claim 5, the elastic waist region 12, 22 completely surrounds the waist; therefore a section of it extends over the front section 14, rear section 16, and side sections S (Figs. 1-3 and Fig. A above). The elastic member 22 is shown to have a higher elastic stretchability than the rest 12 of the elastic waist region 12, 22.

In regard to Claim 6, second portion 48 of the absorbent element 34 is disclosed as being in located within the deformation zone 36/38/28 (column 4, lines 3-19). The absorbent element 34 is disclosed as being flexible and thinner than in second portion 48 than the rest of the absorbent element 34 (column 3, lines 51-55). Thin as been interpreted to mean "not thick, or narrow."

In regard to Claim 14, the absorbent element 34 extends in the longitudinal direction over the whole of the crotch section 18 and slightly up over the front section 14 in the direction of the upper limit edge L during use (Figs. 1-3, 6 and Fig. A above; column 2, lines 3-4; column 3, lines 28-34).

In regard to Claim 17, wherein the absorbent product 10 comprises a two-piece product 12, 34 having an absorbent element 34 in the form of a detachable insert to be fitted inside pants incorporated in the product 10 (Figs. 1-3 and 6; column 3, lines 28-34;

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column 4, lines 3-64). The insert 34 has a rear liquid-tight layer 56 provided with fastening members 31/37/36 by means of which the insert is detachably anchored in the pants 12, and wherein the insert 34 is arranged to be held in place relative to the pants 12 by means of the fastening members 31/37/36 when the front section 14 of the product 10 is pulled down (Fig. 6; column 3, line 51-column 4, line 64).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher.

In regard to Claims 15-16, Fisher does not expressly disclose that the elastic member 22 comprises an elastic non-woven or an elastic film or that the elastic member 22 comprises elastic tape or threads. However, Fisher does disclose that the openings, waistbands, and other elements of the garment 10 may be constructed by any means known to those skilled in the art. It is known that elastic members may be made from any one of an elastic non-woven, an elastic film, an elastic tape, or elastic threads. Thus, it would have been obvious to one of ordinary skill in the art to provide an elastic element comprised of an elastic non-woven, an elastic film, an elastic tape, or elastic threads since having an elastic member comprising such materials is known in the art.



5. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher in view of Cottenden (US 5,702,381).

In regard to Claim 1, as discussed previously, Fisher discloses a pants-shaped absorbent product 10 for males, comprising a front section 14, a rear section 16, a crotch section 18, side sections S to connect the front section 14 and the rear section 16 in the lateral direction, wherein the side sections S comprise hip sections H, an elastic waist region 12, 22, and an absorbent element 34, which covers the penis of the user (column 2, lines 58-column 3, line 10; Figs 1-2, Fig. A below). (The front, rear, and crotch sections 14, 16, 18, are disclosed as being elastic (column 2, line 67- column 3, line 1); thus, the examiner considers the brief 12 (and more specifically, its upper half), which comprise each of these regions—along with waistband 22—to be the elastic waist region.) The product further comprises a liquid-tight outer layer 56 to cover the absorbent element 34 (54) at least on the side thereof facing away from the user when the product is worn; wherein the front section 14 has at least one elastic member 22. The elastic member 22 enables the front section 14 of the product to be pulled down during use, counter to the action of the elastic member, to a position in which the upper limit edge L of the front section 14 in the middle region of the front section 14 is situated below the penis of the user, at the same time as at least the hip sections H of the product are arranged to be held in place around the waist of the user (column 4, lines 20-54). The absorbent element 34 is configured with one or more deformation zones 36/38/28, which enable parts 48 of the absorbent element 34 that are situated above

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and over the penis of the user during product usage to be drawn down together with the rest of the front section 14 when the front section 14 of the product 10 is pulled down, and wherein the front section 14 and the absorbent element 34 are arranged to be returned by the elastic member 22 to an original usage position (column 4, lines 20-54; Figs. 1-3 and 6). The examiner has defined deformation as the alteration in the shape or form of an object. In this case, the addition of a pocket 36 to the front section 14 of product 10 results in an alteration of the shape of the brief 12, especially since it is disclosed that the pocket 36 is typically thicker than the brief 12, which would result in a change in the thickness of the front section 14 and in the overall shape of the brief 12. Giving the recitation, "wherein the absorbent element is configured with one or more deformation zones," a more narrow interpretation, Fisher does not expressly teach that the material of the absorbent element 34 comprises deformation zones.

Cottenden teaches an absorbent element 10 that is to cover the penis of the user and may include means for securing the product to the user's clothing (column 2, lines 14-24). The absorbent element 10 further comprises a liquid-tight outer layer 14 and deformation zones 20/22 (as well as the areas between these elements, which will hereafter be referred to as valleys 21). The deformation zones 20 allow the product to be convertible between a two-dimensional structure for storage and a three-dimensional structure for use (abstract; column 2, lines 9-24).

Fisher and Cottenden are analogous art because they are from the same field of endeavor: absorbent products for male incontinence.

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Thus, it would have been obvious of one of ordinary skill in the art to modify the insert of Fisher to have deformations as taught by Cottenden, since doing so would allow for the insert to be convertible from a two-dimensional state for storage to a three-dimensional state for use.

In regard to Claim 2, as mentioned previously, the elastic member 22 is shown as being made from a single strip of material (Figs. 1-2 and 6), which would result in the material having the same properties throughout. Thus, the elastic member 22 would have a constant tensile stress when stretched.

In regard to Claim 3, as mentioned previously, the elastic member 22 is considered part of the elastic waist region 12, 22 and therefore comprises a section of the elastic waist region 22.

In regard to Claim 4, as mentioned previously, the elastic waist region 12, 22 completely surrounds the waist, therefore a section of it extends over the front section 14 between the hip sections H (Figs. 1-3 and Fig. A above).

In regard to Claim 5, as mentioned previously, the elastic waist region 12, 22 completely surrounds the waist, therefore a section of it extends over the front section 14, rear section 16, and side sections S (Figs. 1-3 and Fig. A above). The elastic member 22 is shown to have a higher elastic stretchability than the rest 12 of the elastic waist region 12, 22.

In regard to Claim 6, Cottenden further teaches that the absorbent element 10 is of a thinner configuration in the deformable zones (21) compared with the rest of the absorbent element 10, essentially areas 20 and 22 (Figs. 3-4). Since valleys 21 are

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thinner than folds/pleats 20/22 and all are made from the same material (column 2, lines 25-39; column 3, line 66-column 4, line 17), these areas 21 would be more flexible than those comprising folds/pleats 20/22.

In regard to Claim 7, the liquid-tight outer layer 14 is flexible (column 3, lines 62-65) and the periphery 16 may comprise an elastic element 23 to allow for some expansion of the absorbent element 10 (column 3, lines 19-40), which would make the absorbent element 10 capable of being bent at fold notches 21 when the front section (12 of Fisher) of the article (10 of Fisher) is pulled down.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher in view of Cottenden in further view of Buell (US 5,197,959).

Fisher in view of Cottenden does not disclose that the fold notches comprise recesses, through-slots, or compression lines in the absorbent element. However, Buell et al. teach that geometric discontinuities (deformations) within an absorbent may be created by pre-set folds, scoring, indentations, or changes in the material properties of an article (column 13, lines 1-37, more specifically lines 20-29). Fisher, Cottenden, and Buell are analogous arts since they are from the same field of endeavor: absorbent articles for removing bodily waste. Furthermore, these prior art are analogous arts since they are from a similar problem solving area: providing absorbent articles with means for bending. Thus, it would have been obvious to one of ordinary skill in the art to modify the absorbent element of Fisher in view of Cottenden to comprise recesses, through-slots, or compression lines instead of folds/pleats since the folds/pleats, recesses,

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through-slots, and compression lines are all recognized equivalents within the art, as supported by Buell, and the selection of any of these known equivalents to provide deformation zones for bending would be within the level of ordinary skill in the art.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher in view of Widlund et al. (US 5,366,452).

Fisher teaches the claimed invention except for the absorbent element comprises a number of separate absorption bodies fitted adjacent to one another in the lateral direction and extending in the longitudinal direction of the product in the direction from the front section to the rear section and wherein the separate absorbent bodies are separable in the lateral direction and longitudinal direction counter to the action of transverse elastic, whereby the separate absorption bodies can be mutually displaced when the front section of the product is pulled down.

Widlund et al. teach an absorbent article comprising a plurality of narrow, flexible absorbent bodies 1a-1g and having a liquid-tight outer layer 2 (column 2, lines 31-45). The absorbent bodies are extent in a longitudinal direction of the product and are laterally spaced adjacent to one another (Figs. 1 and 3). Widlund et al. go on to teach that the construction on an absorbent using plurality of absorbent bodies 1a-1g allows the absorbent to be converted from a flat state to a three-dimensional shape (column 1, lines 55-66;).

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Fisher and Widlund et al. are analogous arts because they are from the same field of endeavor: absorbent articles for removing wastes from the body, including incontinence products.

Thus, it would have been obvious to one of ordinary skill in the art to modify the absorbent product of Fisher to have a plurality of absorbent bodies, as taught by Widlund et al., since doing so would allow the absorbent to be converted from a flat state to a three-dimensional shape.

#### ***Allowable Subject Matter***

8. Claims 9-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. A search of the prior art of record fails disclose any references, which taken alone or in combination, teach or fairly suggest a pants-type absorbent article comprising a deformation zone as well as an absorbent area having multiple absorption bodies that vary from each other in length and stiffness.

#### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Morte et al. (US 5,291,617).

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keshia Gibson  
Examiner  
Art Unit 3761

klg 9/6/05

TATYANA ZALUKAEVA  
PRIMARY EXAMINER

